

**VIRGINIA BOARD OF DENTISTRY
MINUTES
DECEMBER 4, 2009**

TIME AND PLACE: The meeting of the Board of Dentistry was called to order at 9:10 A.M. on December 4, 2009 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jeffrey Levin, D.D.S., President

BOARD MEMBERS PRESENT: Jacqueline G. Pace, R.D.H., Vice President
Robert B. Hall, Jr. D.D.S., Secretary-Treasurer
Herbert R. Boyd, III, D.D.S.
Martha C. Cutright, D.D.S.
Meera A. Gokli, D.D.S.
Myra Howard, Citizen Member
Misty Mesimer, R.D.H.
Augustus A. Petticolas, Jr. D.D.S.
Paul N. Zimmet, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Sandra Ryals, Director for the Agency
Alan Heaberlin, Deputy Executive Director for the Board
Huong Vu, Administrative Assistant

OTHERS PRESENT: Howard M. Casway, Senior Assistant Attorney General

ESTABLISHMENT OF A QUORUM: All members of the Board were present.

PUBLIC COMMENT: **Jack Mrazik, D.D.S.**, spoke on behalf of the Virginia Society of Oral and Maxillofacial Surgeons regarding concerns about the provisions for nurses in Guidance Document 60-13. He asked that the document be amended to allow nurses to assist in administering all levels of sedation including general anesthesia.

APPROVAL OF MINUTES: Dr. Levin asked if the Board members had reviewed the minutes in the agenda package. Dr. Petticolas moved to accept the minutes of the September 10, 2009 meeting. The motion was seconded and carried.

Dr. Boyd moved to accept the minutes of the September 11, 2009 meeting then noted that he would like the Board to revisit the decision about dental hygienists assessing and applying sealants. Dr. Levin added that matter to Board Discussion. The motion on the minutes was seconded and carried.

DHP DIRECTOR'S REPORT:

Ms. Ryals reported to the Board on the following topics:

Performance measures – the Board is doing very well on the Governor's performance measures. She noted that all the boards in the agency met or exceeded the stretch goal of completing cases within 250 days for the first time in the first quarter of 2010. She went on to report that the Board achieved:

- a 106% clearance rate,
- a pending caseload with only 8% of the cases older than 250 business days, and
- 94% of all cases closed were closed within 250 business days.

She asked that staff and Board members continue their efforts to improve performance. Dr. Zimmet thanked Mr. Heaberlin and Ms. Reen for their guidance.

Customer satisfactory survey - Ms. Ryals noted that the survey is now conducted online and the Board is still in good shape at 96% with target for the goal of 97%. Dr. Zimmet asked what the general complaints were. Ms. Reen responded that there was no one consistent complaint, rather they range from lack of courtesy to taking too long to requiring too much documentation. She also said that she has all the staff review all the comments received.

Online application - Ms. Ryals reports that soon applications will be accepted online and all moneys collected will be processed by a central receipting center.

Healthcare Workforce Data Center - Ms. Ryals reported that the Center is wrapping up its first year of work which focused on physicians and nurses. She advised that dental professions would be addressed next year. She noted that the start-up of the Center was funded through the Workforce Investment Fund and future funding ties in with licensure. She said that more information will be available soon.

Licensing Fees – Ms. Ryals said the good news was that the Board did not have to act to increase fees this year but that it is likely that the Board will have to look at fee increase in the near future.

Budget – Ms. Ryals reported that the Governor is planning to transfer \$636,000 from DHP to the General Fund to balance the budget in difficult economic times. Dr. Hall asked what the Board's portion will be. Ms. Reen replied \$4255. Ms. Reen later corrected the amount, stating that \$33,992 would be the Board's share. Ms. Ryals went on to say that the amount charged to a board was calculated based on the number of licensees and the number of staff.

Prescription Monitoring Program (PMP) – Ms. Ryals stated the program now has enhanced security software and provides 24/7

electronic access to the data. She noted that there is an increase in registered users and that an education campaign for new users is in the works. She said she would like to add a dentist to the PMP Advisory Committee and invited nominations. Dr. Hall asked which states are currently participating with the PMP. Ms. Ryals responded all the states bordering Virginia with the exception of West Virginia.

Dr. Zimmet asked Ms. Ryals if the computer problem has been resolved. Ms. Ryals stated yes and added that the criminal investigation is still going on. She went on to say that the only system that was breached was the Prescription Monitoring Program.

Dr. Zimmet asked if the Agency had requested reinstatement of the \$50 per diem. Ms. Ryals responded that she has reported how unhappy the Board members are and noted that the change was made in the Appropriations Act.

**HEALTH
PRACTITIONERS'
MONITORING
PROGRAM (HPMP):**

Peggy Wood, Program Manager and Liaison – thanked the Board for its interest in the program and noted that the program director, Ms. Ziegler, sends her regrets for not being able to attend. Ms. Wood then gave a Power Point presentation on:

- the program structure which includes a seven member oversight committee,
- eligibility and dismissal,
- participation and monitoring contracts, and
- the number of participants.

Dr. Hall asked who sets the requirements for peer monitors. Ms. Wood responded that the Division of Addiction Psychiatry of the VCU Health System does. Ms. Pace asked if case managers should generally appear at formal hearings. Ms. Wood stated yes and added if they are not available in person, they are available by phone. Several board members commented that case managers have not been at recent formal hearings. Ms. Wood said she would look into this to make sure that case managers attend. Dr. Gokli asked about the costs being charged to participants. Ms. Wood said presently the participants do not pay and the agency pays \$225 per month per participant for monitoring. Ms. Mesimer asked how the Board should address concerns about case managers. Ms. Wood responded they should be reported to her to address and follow up with the Board. She went on to say that there are three stages of dismissal process (warning, pre-dismissal, and dismissal) but participant can be dismissed immediately. Ms. Mesimer asked if the licensee would need approval from the Board to have their contract amended. Ms. Wood stated that participant can pull a compliance report five days before administrative proceeding to show their status.

Dr. Levin asked to have Dr. Ziegler speak at the next Board meeting. Ms. Wood stated that she will pass on the message to Dr. Ziegler.

REPORTS:

Board of Health Professions (BHP). Dr. Zimmet reported he was not at the last meeting and asked Ms. Ryals for an update. Ms. Ryals stated that the focus is on the need to register or license a number of emerging professions, including polysomnographers, surgical assistants and community health workers.

AADB. Dr. Levin reported that actions taken in the Hawaii meeting included changing the organizations name from examiners to boards, adding a public member to the executive council and monitoring developments regarding a single national exam. He added that the next meeting will be in April 2010 in Chicago.

SRTA. Dr. Gokli noted that the Southern Conference of Deans and Dental Examiners will meet in D.C. in January and offered SRTA's 2010 examination schedule for review. She directed attention to Dr. Watkins's Exam Committee report and said the matters addressed in the last Board of Director's conference call meeting were:

- The fees for the examinations will not change this year,
- Examiners will take the calibration exam online,
- Evaluating the use of plastic versus natural teeth in the endodontics section, and
- The Alabama Board of Dentistry is now accepting SRTA examinations.

Ms. Reen asked Dr. Gokli to send her information on the SRTA Board of Directors meeting being held in January of 2010. Dr. Boyd asked if the examiners have to be current or former Board member. Ms. Reen stated yes for SRTA but not for all the testing agencies.

Regulatory/Legislative Committee. Ms. Howard reported the following regulatory actions were discussed at the November 2009 Committee meeting:

- Registration of Mobile Clinics – the emergency regulations become effective on January 8, 2010 and the comment period on the NOIRA is open until December 23, 2009.
- Recovery of Disciplinary Costs – proposed regulations will be presented to the Board for action later today.
- Registration and Practice of Dental Assistants – were pending the Governor's Office review.
- Periodic Review of Regulations – the chart on Part V was presented and is currently being circulated to committee members for review. Staff is working to have the members' reviews of the last three parts (V, VI, and VII) ready for discussion at the next Committee meeting scheduled for January 22, 2010.

LEGISLATION AND REGULATION:

Ms. Yeatts reported the following agenda items:

Review of Regulatory Actions. Ms. Yeatts reported the following:

- Registration of Dental Assistants II – the Governor has approved the proposed regulations which will be published for comment on the 21st of December. There will also be a public hearing on January 22, 2010 at 1:00 pm.
- Mobile Dental Clinics – these emergency regulations have been approved and will be in effect on January 8, 2010. Ms. Reen added that she has sent notices of the registration requirements to four companies that have practiced in mobile clinics in Virginia.
- Disciplinary Action Cost Recovery – the proposed draft is presented for action by the Board. She said the proposal was based on other states' regulations. Ms. Yeatts then reviewed the proposal noting that:
 - A. Investigation costs – would be calculated each year using agency cost data, would be set out in a guidance document and would be charged as a part of Board Orders.
 - B. Monitoring costs – would also be calculated each year, set out in a guidance document and addressed in Board Orders. She added that these costs would be assessed for each year of monitoring and noted that inspection fees, returned check fee and collection costs are not included in monitoring.
 - C. Total assessment – the limit for recovering investigation and monitoring costs is set in statute at \$5000. Dr. Levin asked how the investigation cost would be calculated. Ms. Ryals responded that Enforcement has the responsibility of tracking the hours spent on a case and Finance will determine the hourly cost of the investigation.
 - D. Waiver of cost – the Committee decided against including a waiver provision but wanted the Board to see the language it recommends striking.

Following discussion, Dr. Zimmet moved to accept the regulations as recommended by the Committee. The motion was seconded and passed.

BOARD

DISCUSSION/ACTION: **ADA Letter on Exam Acceptance.** Dr. Levin noted this was provided as information only.

VASOMS Letter on Guidance Document 60-13. Ms. Reen noted that in response to Dr. Thomas Padgett's email, she has done some additional research. She talked again to the Executive Director of Board of Nursing and AAMOS to better understand what nurses are currently permitted to do and to see if there was a way to address VASOMS concerns. She stated it was important for everyone to

understand that the guidance document is not a law or regulation and it cannot be used as the basis for disciplinary action. It does not establish new policy but addresses what is currently permitted in law and regulation. She noted that the Board of Nursing Guidance Document 90-5 on nurses administering conscious sedation clearly says the additional license for the Certified Registered Nurse Anesthetist (CRNA) is required to administer general anesthesia and further Dentistry's regulations only allow delegation to an anesthesiologist or in certain instances a CRNA. Ms. Reen reported that Guidance Document 60-13 is accurate as issued.

Ms. Mesimer expressed concern about not allowing dental hygienists to administer local anesthesia after the administration of anxiolysis. Dr. Petticolas asked what could be done for the oral and maxillofacial surgeons. Ms. Reen responded that the Board could not resolve the concern because the issue is the scope of practice of nurses. Mr. Casway added that there is no statutory authority for the action requested by the surgeons and Ms. Ryals agreed. Dr. Levin stated that the guidance document will stay as is.

Review of Guidance Document 60-19. Ms. Reen stated that the guidance doc on periodontal diagnosis and treatment and the 2007 Current Procedural Terminology are before the Board to consider if a guidance document is still needed and if it is should it be revised. Ms. Mesimer noted that the guidance document seems to limit what dentists can do. Ms. Reen asked if there was adequate literature available on this topic or is the document still needed. The consensus that emerged from discussion of amending the guidance document was that it is out of date and no longer needed. Dr. Hall moved to withdraw the Guidance Document. The motion was seconded and passed.

AGD Transcript – Survey. Ms. Reen stated that she received this email from AGD to see to if the Board is interested in pursuing a universal continuing education (CE) certificate. Dr. Zimmet recommended the response should be no because there isn't a problem. All Board members agreed.

Information on Sargenti Paste from Ms. Miczulski. Ms. Reen noted that the Board addressed this in the past as the use of the paste does not meet the standard of care. She said that there is a video available if the Board wished to view. Dr. Levin decided there was no need to view the video since the Board has already dealt with this.

Standard for Professional Conduct. Dr. Levin reported the guidance document is recommended for adoption by the Executive Committee and asked if the Board has any questions. No question was raised. Dr. Petticolas moved to accept the guidance document. The motion was seconded and passed.

Guidance on General Supervision. Dr. Boyd asked for reconsideration of the response made to the VDH inquiry about general

supervision at the September 11, 2009 meeting. He stated that the minutes are correct but he is concerned that the response made allows dental hygienists to make a final diagnosis. Dr. Petticolas, who had voted on the prevailing side on September 11th, moved to reconsider the response. The motion was seconded and passed. Ms. Reen read the response that was sent following the September 11th meeting and advised that under current law, dental hygienists can not make a final diagnosis. She indicated that the response made was based on a conclusion that assessing the need to reapply sealants was not considered to be a final diagnosis. A motion to refer the matter to an appropriate committee was defeated.

**REPORT ON CASE
ACTIVITY:**

Mr. Heaberlin reported that the performance goals for 2010 on the three key performance measures for discipline are:

- Maintaining a 100% clearance rate,
- Ensuring that no more than 25% of all patient care cases are open longer than 250 business days, and
- Closing 90% of cases within 250 business days.

He went on to state that out of the three largest boards, Dentistry is the only board that met all three performance measures for the first quarter of fiscal year 2010. He then reported that one year ago, the Board had 80 cases over 250 business days. At the beginning of the second quarter the Board had 5 cases over 250 business days.

He reminded Board members of the importance of giving clear reasons for their decisions for disposition of a case to help staff prepare documents or address respondent or source concerns. Ms. Reen asked Board members to be mindful that each case is reviewed by only one person. She said it is very important for the reviewer to consider if all the information needed to make a decision is in hand. She recently reviewed a case on RCT, where perforation into the sinus cavity was alleged, when the source contacted her about the case being closed no violation. She reviewed the file and found that there were no x-rays in evidence. She cautioned reviewers against making decisions without adequate information. Staff was encouraged to call the reviewer in such circumstances. Ms. Reen said she had asked Enforcement to obtain the x-rays for further review.

**EXECUTIVE
DIRECTOR'S
REPORT/BUSINESS:**

Report on OMS Audit. Ms. Reen gave a Power Point presentation on the cosmetic procedures Quality Assurance Review completed in 2009. The presentation addressed:

- the history of the requirements in §54.1-2709.1
- the outcomes of the first review completed in 2007
- the outcomes to date of the 2009 review
- costs and fees.

Law Exam. Ms. Reen reported that the law exam given by the Texas Board is administered so that the actual law or regulation will pop-up for review if an incorrect answer is given. She added that until the question was answered correctly, the applicant/licensee could not move on to the next question. She asked for permission to explore revising the Board's current law examination to see if this reference feature could be added. Approval was agreed to by consensus.

**BOARD COUNSEL
REPORT:**

Mr. Casway stated that he had nothing to report.

SERVICE AWARD:

Dr. Levin presented Dr. Gokli with a plaque recognizing her service as the President for Board of Dentistry. Dr. Gokli thanked everyone for their support.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 1:40 p.m.

Jeffrey Levin, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date